

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12377 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SAURASHTRA KAAMDAR SANGH

Versus

STATE OF GUJARAT

Appearance:

MR AK CLERK for Petitioner No. 1
Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for
Respondents No. 1-2
NANAVATI ASSOCIATES for Respondents No. 1,3
MR TR MISHRA for Respondent No. 4

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/10/2001

C.A.V. JUDGEMENT

The present petition is filed by Saurashtra Kamdar Sangh through its President against the State of Gujarat; Government Labour Officer, Jamnagar; and Carborundum Universal Limited (hereinafter referred to as "the respondent Company" for short). The petition is filed to challenge the action of respondent no.3 Company to lay off, non payment of full wages to the workmen and also apprehended action of rendering the workmen unemployed either by way of lock out or by termination. The petitioner contended that the action of the respondent company is arbitrary, capricious, unreasonable

and violative of provisions of Industrial Disputes Act and the rules framed thereunder and also violative of fundamental rights of the members of the petitioner union. It is also alleged that the action of the respondent company is therefore illegal, null and void ab initio.

2. The case of the petitioner is that there are 42 workmen at Varvala plant of the respondent company of whom 24 are the members of the petitioner union. [The other union, Bharatiya Mazdoor Sangh filed Civil Application No.399 of 2000 for being joined as a party respondent in the main petition and the same was granted by an order of this Court dated 11.1.2001 and thus, the other union is also before this Court and it is stated in the Civil Application that the applicant union supports the averments and the submissions made in the said petition and may bring further evidence to show that the respondent company has wilfully and deliberately created artificial scarcity for illegally laying off the workmen with ulterior motive with a view to close down the establishment of the respondent company and shifting its activities to some other place].

3. The case of the petitioner union is that Varvala plant was initially producing brown abresive grains. Thereafter, the respondent company switched over to white abresive grains and other products. The company has gradually shifted production of white abresive grains from Varvala plant to Cochin Plant II of the company and declared lay off for the entire work force at Varvala plant by notice dated 5.11.2000 for a period from 5.11.2000 to 20.11.2000. A copy of the notice dated 5.11.2000 is produced at Annexure 'B'. The petitioner union contends that this notice was put on Notice Board at around 5.00 AM in the night shift of 4.11.2000 and that no prior notice of lay off was given to the workmen. It was suddenly, out of the blue, this Notice dated 5.11.2000 was placed on the Notice Board by the respondent company.

4. The petitioner union immediately on 5.11.2000 addressed a letter to the respondent company stating that the company should not take any steps which may result into industrial unrest for no fault of the workmen concerned. A copy of said letter is at Annexure 'C'. The petitioner union then addressed another letter dated 8.11.2000 to the Head Office of the respondent company pointing out that the workers were being illegally laid off and the workers are unnecessarily harassed. The petitioner union mentioned in the said letter that the

management had informed the union that the decision was taken by top level management to lay off the workers, therefore, the letter dated 8.11.2000 was addressed to the Head Office. A copy of this letter is annexed at Annexure 'D'. As an attempt to find solution to the problem the petitioner union addressed yet another letter dated 9.11.2000 to the General Manager, Electro Mineral Division (hereafter referred to as "EMD") of the respondent company at Cochin, requesting him to intervene in the matter. A copy of this letter is annexed at Annexure 'E'. The petitioner union then addressed a letter dated 14.11.2000 to the Manager at Varvala and pointed out that the lay off was illegal and that the workmen are not paid full wages. The petitioner then addressed a letter dated 15.11.2000 to the Govt Labour Officer, State of Gujarat, stating that the respondent company had declared lay off illegally from 5.11.2000 and requesting him to intervene in the matter immediately. A copy of said letter is at Annexure 'F'. The petitioner addressed a letter dated 15.11.2000 to the Manager of the respondent company at Varvala requesting him supply a copy of the Standing Order, but the same has not been supplied to the petitioner so far. A copy of said letter is at Annexure 'G'.

5. The petitioner union then lodged a complaint on 18.11.2000 with the Deputy Commissioner of Labour, State of Gujarat, Rajkot regarding illegal lay off in the respondent company declared from 5.11.2000. A copy of said letter dated 18.11.2000 is at Annexure 'H'. On the other hand the respondent company placed another notice dated 19.11.2000 on the Notice Board extending period of lay off upto 21.12.2000. A copy of Notice dated 19.11.2000 is annexed at Annexure 'I'. The petitioner union protested against extension of lay off by letter dated 20.11.2000, a copy of which was forwarded to the Assistant Commissioner of Labour, Jamnagar. Said letter is at Annexure 'M'.

6. Learned advocate Mr.Clerk appearing for the petitioner union submitted that taking into consideration the fact that since 5.11.2000 the workers were out of job and by the actions taken by the petitioner union there was no solution in sight, the petitioner union approached this Court by filing petition on 30.11.2000 and an urgent note was filed on 1.12.2000, requesting that the matter may be placed on Board on Monday, the 4th December 2000. This Court passed an order on 4.12.2000, which reads as under:

"Notice returnable on 13th December 2000.

Meanwhile the respondent no.3 is directed not to terminate the services of the concerned workmen. Direct service is permitted."

7. The petitioner union challenged the action of lay off, non payment of full wages and also the apprehended action of the respondent company rendering its workmen unemployed either by lock out or by termination. It is the case of the petitioner union that the lay off declared by the respondent company is patently illegal, void ab initio and that no prior notice was given either to the workmen or to the petitioner union. It is contended by the petitioner union that the respondent company had unilaterally refused to give work to the concerned workmen on 5.11.2000 though all the workmen were ready to work and therefore, the action of the company in refusing to give work amounts to illegal refusal of the company to give work to the workmen and therefore, the respondent company is bound to pay full wages to the concerned workmen since 5.11.2000 onwards.

8. The petitioner union stated in para 20 of the petition that the respondent company at its Okha plant had also declared an illegal lay off and the workmen had to rush to the Labour Court against the said illegal lay off. It is also submitted that the respondent company had declared lay off illegally at different plants and harassed the workmen by rendering them unemployed for no fault of the workmen. It is also stated that the company had taken over Cut Fast Abrasive Limited at Dhrol and more than 100 workmen were first let off and thereafter terminated from service in the year 1995-- 96. It is also contended that the respondent company is resorting to lay off as a first step before terminating the services of the workmen. The petitioner union contended that the respondent company is a profit making company and Annual Report of the company for the year 1999-- 2000 shows profit of Rs.32 crores (approximately). It is also submitted that the respondent company has four plants in Tamil Nadu, five plants in Kerala and two plants and one mine in Gujarat. The petitioner union also pointed out in the same para that in the Annual Report of the company it is stated that manufacturing operations of Varvala plant have been shifted to Edapalli (Cochin) because of high power tariff in Gujarat. The petitioner union thus demonstrated that the respondent company had shifted its production from Gujarat to Cochin because of high power tariff. The petitioner union also contended that no reasons were given in the notice dated 5.11.2000 for laying off the workmen by the respondent company. In absence of any reason, 'lay off' is without any

justification and is vitiated by mala fides. Therefore, same is illegal, null and void. It is also contended by the petitioner union that the Labour Officer, Jamnagar, respondent no.2 herein, directed the respondent union to pay full wages to the workmen, by letter dated 20.11.2000 and therefore, the respondent company is bound to make payment of full wages to the concerned workmen since 5.11.2000 onwards.

9. The petitioner union contended that the petitioner union is having a genuine and bona fide apprehension that the respondent company will arbitrarily, unilaterally and without any prior notice, terminate the services of the workmen of Varvala plant. This is also clear from earlier actions of the respondent company at its plants at Dhrol and Okha. Therefore, protection is required to be granted to the members of the petitioner union.

10. In response to the notice of this Court, the respondent company appeared and filed its reply. Along with its affidavit in reply, has produced a copy of notice dated 18.10.2000. Notice is in Form No.XXIV-- B under Rule 82A of Notice of Closure under subsec.(1) of sec.25FFA of Industrial Disputes Act, 1947. It is addressed to the Secretary to the Govt. of Gujarat, Education & Labour Department. The notice reads as under :

"In accordance with the provisions contained in subsec.(1) of sec.25 FFA of the Industrial Disputes Act, 1947 (XIV of 1947), we hereby inform you that we intend to close down our undertaking with effect from December 22, 2000 for the reasons explained in Annexure 'A'."

The second para of the said notice states that,

"The total number of workmen of the undertaking who will be affected by the closure is given as per Annexure 'B'."

Annexure 'A' to the notice is "Statement of reasons for closure". Reproduction of the contents of Annexure 'A' are required for ready perusal. It reads as under:

"Carborundum Universal Ltd. started its operation at Varvala during 1990-- 1991 for manufacturing Brown Aluminum Oxide grains. The product was to be used for manufacturing Bonded Abrasives and Refractory items. The major raw

material for manufacturing Brown Aluminum Oxide grains was Calcined bauxite and Electricity. Frequent revisions by the GEB made the production of Brown Aluminum Oxide grains totally inviable at Varvala plant. Considering the above and in order to sustain the Varvala operations we changed the product from Brown Aluminum Oxide grains to White Aluminum Oxide grains. The change over from Brown Aluminum Oxide grains to White Aluminum Oxide was done in 1993-- 1994 and we have been operating for manufacturing White Aluminum Oxide grains. The further revisions of power cost by the GEB have resulted in the White Aluminum operations also becoming unviable. Limited captive and low price refractory market could not bear this high cost of manufacturing. Since electricity is a major raw material for the production of the above products the rates became highly uneconomical and revisions have made any opportunity for survival totally bleak. The last hike on the power cost by the GEB has thrown away any option for us to survive and we have left with no other option but to close down.

Varvala being at the western end of the country, eastern and the major customers spread out at the southern end the substantial increase in transportation of raw material and finished goods have also added to our cost, thus making the product totally uneconomical. The product faces stiff competition from other competitors and due to the above cost increases we are not in a position to compete in the market. The imports of intermediaries at cheaper rates have also added to our difficulty. The periodical increase in power tariff and reduction in import duty has made the plant operation totally unviable for future also.

Our efforts to revive the viability of operation are not yielding results. Therefore, the company has no option but to close down the establishment effective 22.12.2000. The workmen and staff concerned will be discharged by paying their legal dues.

Sd/-

Carborundum Universal Ltd."

11. In the affidavit in reply which is filed by the respondent, it is contended that writ (Special Civil Application) is not maintainable as it seeks writ of

mandamus for payment of full wages against the respondent company which is a private limited company and not the State. That the basic grievance of the petitioner is that the respondent company has declared illegally the lock out with effect from 5.11.2000. They are seeking a direction from this Court for payment of full salary since 5.11.2000 which deserves to be rejected and interim relief granted may be vacated. It is stated in the affidavit in reply that,

"... In any event, without going into the merits of the case as stated before this Hon'ble Court on 18.12.2000, the respondent company is ready to deposit the differential amount of wages from 5.11.2000 to 22.12.2000 before this Hon'ble Court till the matter is finally adjudicated upon by a competent court."

The affidavit in reply has also narrated the fact of giving notice under sec.25 FFA of the Industrial Disputes Act.

12. It is thereafter that the petitioner union amended the petition and the Court passed an order on 21.12.2000, as under:

"Draft amendment is granted as the issue involved in the petition requires some close scrutiny. Rule returnable on 9.1.2001.

Ad interim relief granted earlier to continue till then. However, the same will be without prejudice to the rights and contentions of both the sides. It is clarified that closer notice issued by the management will not be effective till 10.1.2001."

13. The petitioner union by amendment added para 22A to 22F and also added a prayer clause being para 26(aa). The petitioner union contended that as the respondent company had not given any notice either to the petitioner union or to the concerned workmen of its intention to close down the undertaking on 22.12.2000, the action of the respondent company is in gross violation of principles of natural justice in view of the decision of the Apex Court in the case of D.K. Yadav v. J.M.A. Industries Ltd., reported in 1993 (3) SCC 259. According to learned advocate for the petitioner union the Apex Court has held that,

"... .. even a private employer cannot be permitted to terminate the services of its employees in violation of Articles 14 & 21."

14. Learned advocate appearing for the petitioner union submitted that as is mentioned in para 22(C) under Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, (hereinafter referred to as "the Standing Orders"), the procedure is prescribed and the company has to follow the same. Standing order 10(3) reads as under:

"The Manager may close down the whole establishment after giving three months notice to the workmen. Seven days public notice of the restarting of the establishment shall be given either in a newspaper having wide local circulation or by letters to individual workmen concerned."

15. It is contended that the respondent company has not given any notice much less three months notice as required under the Standing Order 10(3) of the Standing Orders and therefore, the action of the respondent company is illegal, null and void.

16. Learned advocate appearing for the petitioner union submitted that the present writ petition is maintainable under Article 226 of the Constitution of India and deserves to be entertained in view of the decision of this Court in the matter of *Miscellaneous Mazdoor Sabha v. State of Gujarat & others*, reported in XXXIII (2) GLR 1065. Learned advocate submitted that this Court has held that when the entire labour force is rendered jobless without following the legal provisions, the writ petition is maintainable and the same deserves to be entertained. He further submitted that the facts in the aforesaid case and the facts of the case on hand are more or less similar and therefore, the respondent company cannot be permitted to terminate the services of the entire work force without giving any due notice to the concerned workmen.

17. Learned advocate for the petitioner union submitted that as contended in para 22E, the appointment orders issued by the respondent company to the concerned workmen has a clause that,

"... .. workmen should be prepared to work in any of the division/ department of the company in any location in India under the

discretion of the management. In the event of transfer the employee will be governed by the terms of service pertaining to the respective unit. . . ."

Learned advocate submitted that in view of this condition in the appointment order various units of the company in various parts of the country are to be treated as 'one single industrial establishment' for the purpose of Chapter V- B of the Industrial Disputes Act and therefore, total number of workmen employed by respondent no.3 company exceeds 100. Thereby respondent company is required to obtain prior permission of the appropriate Government, that too at least 90 days before the date on which intended closure is to become effective. Learned advocate for the petitioner union submitted that as submitted earlier the respondent company is having four units in Tamil Nadu, five units in Kerala and two plants and one mine in Gujarat. According to learned advocate, all these undertakings constitute a single industrial establishment for the purpose of Industrial Disputes Act and therefore, the respondent company cannot close its unit at Varvala without obtaining prior permission of the appropriate Government. Alternatively, learned advocate for the petitioner also submitted that even notice dated 18.10.2000 given by the respondent company to the Govt., which is produced along with the affidavit in reply at Annexure 'I' shows that the plant at Varvala is part of 'Electro Minerals Division' of the Company. Learned advocate placed reliance on the Annual Report of the respondent company for the year 1999-2000 also, wherein it is stated that,

"Sales of the electromineral division were lower than last year by 14% as a result of a conscious decision to restrict supply of brown fused alumina only for captive use. There was heavy pressure on prices due to stiff competition from imports and also from substitute products.

During the year there was a steep hike of 35% in power tariff in Kerala which resulted in an increase of about Rs.2 crores in power cost for the Division. The division countered this through better power management, improvement in operating efficiencies and recoveries and control of fixed expenses.

The white fused alumina manufacturing operations at Varvala have been shifted to Edapally

considering the high power tariff in Gujarat. In the silicon carbide market there was intense competition between various players in the market resulting in lower price realisation."

18. Learned advocate for the petitioner union emphatically contended that from the aforesaid part of the Annual Report it is clear that Varvala plant in Gujarat and the unit of the company at Edapsalli in Kerala form part and parcel of the same division of the company, namely, Electromineral Division. He reiterated that even the condition inserted in the appointment order also clearly shows that the employees are transferrable from one unit to another and in view of that these units constitute a 'single industrial establishment' for the purpose of Industrial Disputes Act and that being so the respondent company cannot close down the unit at Varvala without prior permission of the appropriate Govt. under sec.25(0) of the Industrial Disputes Act.

19. The respondent company filed its affidavit in reply to the draft amendment which is lengthier than the reply to the main petition. The company denied the contents of the draft amendment and submitted that there is no violation of principles of natural justice. That the company due to reasons mentioned in the statement of reasons has decided to close down its undertaking. That it has complied with the provisions of sec.25FFFA of the Industrial Disputes Act. It is stated in the reply that the respondent company vide its notice of closure dated 18.10.2000 conveyed its intention to the Government authorities of closing down its undertaking with effect from 22.12.2000. The respondent company had also prepared cheques towards compensation to be paid to each of the workmen under sec.25FFF of the Industrial Disputes Act along with three months notice pay, leave wages, unclaimed hospitalisation amount and leave travel assistance. It is also stated that a notice displayed on 21.12.2000 for effecting closure on 22.12.2000 was also kept ready. It is also submitted on behalf of the company that the respondent company is also offering notice pay of three months along with the compensation payable under sec.25FFF. Therefore, the petitioners are not justified in making grievance of non compliance of Standing Order No.10(3) of the Model Standing Orders.

20. It is also contended by the respondent company that the facts of the case of Miscellaneous Mazdoor Sabha reported in XXXIII (2) GLR 1065 (supra) are not applicable to the present case. It is contended on behalf of the company that the provisions of Chapter V-B

are applicable to the facts of the present case. The case of the company is that even as per the say of the petitioner union, the respondent company is employing 42 employees. Section 25FK of the Industrial Disputes Act provides for applicability of the provisions of Chapter V-- B. There it is provided that the provisions of the Chapter shall apply to the industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. It is contended on behalf of the respondent company that 'inter departmental/ inter divisional transferability' of an employee cannot decide the 'functional integrality' of a unit with another. According to the company the Varvala unit is a separate undertaking having separate licence and registered as a factory under the Factories Act and separate Sales tax and Excise registration. It has separate service conditions for its employees. It is also the case of the respondent company that Varvala unit has been considered as a separate unit by the State of Gujarat while granting it exemption for five years from collection of Sales Tax and payment of electricity duty. It is also submitted that the respondent company on its own volition has never effected transfer of any of its employees from Varvala unit to any other units located in India. It is also submitted that on the basis of inter divisional transfer clause in the appointment order, functional integrality between Varvala plant and other units located in other parts of the country cannot be established and they cannot constitute one single industrial establishment.

21. It is also reiterated on behalf of the respondent company that the respondent company is a public limited company registered under the Companies Act and therefore, it is not State within the meaning of Article 12 of the Constitution of India and therefore not amenable to writ jurisdiction of this Court and as Varvala plant is a separate undertaking employing 42 direct employees and approximately 20 contract employees, the provisions of Chapter V-- B are not applicable. It is also submitted that in any event whether provisions of Chapter V-- B are applicable or not is a question of fact, and can be decided only by leading evidence and not by agitating before this Honourable Court. Therefore, petition deserves to be rejected as it involves disputed questions of fact.

22. In view of the fact that the applicability of the provisions of Chapter V-- A or V-- B will depend upon the fact of number of employees employed at Varvala plant which is also a pure question of fact. Whether Varvala

plant with all other units of the company, namely, four in Tamil Nadu, five in Kerala and that of Gujarat form one single industrial establishment for the purpose of Industrial Disputes Act, is also a question which cannot be decided under Article 226 of the Constitution. Alternatively, whether Varvala plant with other unit at Edapalli in Kerala of the same division of the respondent company, namely, Electro Mineral Division can be said to have 'functional integrality' is also a question of fact which can be decided only by leading necessary evidence on this point. In this view of the matter this Court does not propose to examine the contentions raised by both the parties, namely, the respondent company as a whole is to be considered as a single industrial establishment under the Industrial Disputes Act or only its Electro Mineral Division as a whole is to be considered 'one single industrial establishment' or while deciding the strength of the employees at Varvala plant, which is a part of Electro Mineral Division of the company, persons working at Head Office, looking after the work of Electro Mineral Division are to be included while determining the number of the workmen which will decide as to whether Chapter V-- A or V-B will be applicable. In the present case the main contention of the petitioner union is that the provisions of Chapter V-- B are applicable while the case of the respondent company is that provisions of V-- A are applicable. For deciding the applicability of either of these chapters, 'number of workmen' is a crucial factor. For deciding the number of workmen other factors are required to be taken into consideration that can be done only after leading of proper evidence and giving an opportunity to the other side to meet with the same. This Court is of the opinion that writ petition is not an effective remedy and the petitioner must take recourse to the alternative and more efficacious remedy available under the labour laws.

23. Taking into consideration the facts of the case that the respondent company issued notice on 5.11.2000 for laying off the workmen only upto 20.11.2000 and thereafter putting another notice on 19.11.2000 extending the period upto 21.12.2000 though the respondent company had given notice dated 18.10.2000 to the concerned authorities under sec.25FFA shows that the action of the company laying off the workmen by notice dated 5.11.2000 and extending period of lay off by notice dated 19.11.2000 was not bona fide. The interim relief granted earlier requires to be continued for a further period of three months from the date of receipt of copy of this judgement and order so as to enable the petitioner union

to take recourse to alternative, efficacious remedy available to it under the labour laws.

24. In the result, for the reasons mentioned hereinabove, petition is dismissed. Rule is discharged with no order as to costs.

25. The interim relief granted earlier shall continue for a further period of three months from the date of receipt of copy of this judgement and order so as to enable the petitioner union to take recourse to alternative, efficacious remedy available to it under the labour laws.

(Ravi R. Tripathi, J.)

karim